IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4272 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JASHWANT THAKORDAS DHARIYANI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HL JANI AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2001

ORAL JUDGEMENT

1. Heard Ms.D.R.Kachhavah, learned advocate for the petitioner and Mr.H.L.Jani, learned AGP for the respondents.

2. In the present petition, under Article 226 of the Constitution of India, the order of detention passed on

5/12/2000 by the detaining authority has been challenged by the petitioner. The order of the detention has been passed by the Police Commissioner, Vadodara under Section 3(1) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter be referred to as "the PASA Act"). The present petitioner has been detained in District Jail, Junagadh as a Class-II detenu. The ground of detention has been communicated and supplied to the petitioner on 5/12/2000 under Section 9(1) of the PASA Act. According to the ground of detention, three offences have been registered against the present petitioner under the provisions of Bombay Prohibition Act and last offence was registered on 11/9/2000. The petitioner was enlarged on bail. The statements of the secret witnesses were recorded on 12/10/2000, 13/10/2000 and 14/10/2000, whereby the same were verified on 25/11/2000. The three unregistered offences were registered on 9/9/2000, 24/9/2000 and 8/10/2000 from the statements of the secret witnesses. The representations submitted by the petitioner on 18/5/2001, which has been rejected by the State Government on 2/6/2001 and the same was received by the detaining authority on 22/5/2001, which was forwarded by the detaining authority on 23/5/2001 and the same was communicated to the petitioner by letter dated 29/6/2001. The respondents have filed the affidavit-in-reply.

3. Ms.D.R.Kachhavah, learned advocate for the petitioner has raised various contentions challenging the order of detention, but according to her submission two contentions are enough to vitiate the order of detention. The first contention raised by the learned advocate for the petitioner that there was delay in passing the order of detention because, the last offence was registered on 11/9/2000 and the order of detention has been passed on 5/12/2000. The specific contention has been raised in para-(13) of the petition. Ms.Kachhavah has relied upon the decision of this Court in the case of Elesh Nandubhai Patel v/s. Commissioner of Police, Ahmedabad City & Others, reported in 1997 (1) GLH 381. The second contention has been raised by the learned advocate for the petitioner that the representation dated 18/5/2001, which has been received by the detaining authority on 22/5/2001, which has been verified by the detaining authority on 23/5/2001 and the State Government has rejected the same on 2/6/2001 and communicated to the petitioner by letter dated 29/6/2001. Ms.Kachhavah has also submitted that there was a delay in deciding the representation as well as there was delay in communicating the decision of rejecting the representation by the State Government. Ms.Kachhavah has relied upon the decision of the Hon'ble Apex Court in the

case of Harish Pahwa v. State of U.P. and others, reported in AIR 1981 Supreme Court 1126. The specific contention has been raised by the petitioner in para-[10] of the petition.

4. Mr.H. L. Jani, learned AGP for the respondents has submitted that the contention which has been raised by the petitioner in para-[10] and [13] of the petition, against which the reply has been filed by the detaining authority in para-[9] and [11] at page-[31] and [32]. Mr.Jani has also submitted that looking to the facts and circumstances as well as materials which are on record, the order of detention has rightly been passed by the detaining authority. Mr.Jani has also submitted that there were compelling circumstances to pass the order of detention and the detaining authority has no other option to pass the order of detention, otherwise the activities which have been carried out by the petitioner definitely adversely affected the public order. Therefore, the order of detention is legal and valid which does not require any interference by this Court.

5. I have considered the submissions made by the learned advocate of respective parties. Considering the facts which are on record and looking to the last offence was registered on 11/9/2000, there was a delay in passing the detention order for more than two months, which unexplained. Even in the reply, no any explanation has been given by the detaining authority. Therefore, the view taken by by this Court in the case of Elesh Nandubhai Patel v/s. Commissioner of Police, Ahmedabad City & others, reported in 1997 (1) G.L.H. 381, the relevant para-[21] is quoted as under :-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or

to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli. SCC 61."

6. In respect to the second contention has been raised by the learned advocate for the petitioner that the representation dated 18/5/2001 was submitted by the petitioner and the same has been received by the detaining authority on 22/5/2001 and forwarded by the detaining authority on 23/5/2001 to the State Government and the State Government by its order dated 2/6/2001 rejected the same and communicated to the petitioner by letter dated 29/6/2001, there was a delay in taking decision on representation as well as there was a delay in communicating the decision of rejection of the representation. There was no any explanation given by the State Government as to why there was a delay in deciding the representation and to communicate the decision of rejection to the petitioner. Therefore, the view taken by the Hon'ble Apex Court in the case of Harish Pahwa v. State of U.P. and others, reported in AIR 1981 Supreme Court 1126, the relevant observation of the said decision is quoted as under :-

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it aculminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Against, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is considered. Calling comments from

> other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasis that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

7. In view of the aforesaid observations made by the Hon'ble Apex Court as well as this Court and looking to the facts which are on record, according to my opinion, there was a delay in passing the order of detention which, remains unexplained as well as there was a delay in deciding the representation as well as communicating the decision to the petitioner. Therefore, according to my opinion, the order of detention is required to be quashed and set aside.

8. For the aforesaid reasons the petition succeeds and the same is allowed. The order of detention dated 5/12/2000 is vitiated and resulted to quash and set aside. The detenu Jashwant Thakordas Dhariyani (Sindhi) who has been detained at District Jail, Junagadh be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

[H. K. RATHOD,J.]

VRPanchal